IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MR JUSTICE R.SUBHASH REDDY**

**WRIT PETITION NO : 8928 of 1995**

Between:

1. Mallu Penchal Reddy (died)

2 . Gudigi Yanadaiah

3. Yegatala Krishnaiah

4. Mallu Chinnappa Reddy

(Note: Petitioner No.4 brought on record as LR of the deceased-Petitioner No.1 as per Court order dated 20-1-2005 inWPMP.No.457/05.)

**..... PETITIONER(S)**

AND

1 Govt. of A.P. rep.by its Pr. Secretary Irrigation & C.A.D.(P.W.)

Dept., Secretariat Hyderabad
2 The Spl.Collector Telugu Ganga Project
Nellore
3 The Spl. Dy. Collector Telugu Ganga Project
Podalakur Nellore

**.....RESPONDENT(S)**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction one in the nature of writ of Mandamus declaring the action of the 3rd respondent in not passing the award in respect of the petitioners houses admeasuring 40.22 sq. Mts. and 25.99 Sq. Mts., of the 1st petitioner, 40.16 sq. Mts. of the 2nd petitioner and 25.06 and 30.60 sq.Mts. of the 3rd petitioner

situated in Gopa Samudram (v), Hamlet of Penubarthi, Rapur (M), Nellore Dist., though they are acquired under the notification issued under section 4 (1) of the Land Acquisition Act in G.O. Rt.No.804 Irrigation and C.A.D. (Project Wing) Dept., dt: 6/11/1992 as illegal, arbitrary, without jurisdiction and violative of Article 300-A of the Constitution of India and consequently direct the respondents to pass award in respect of the petitioners' house property and pay compensation to the petitioners.

Counsel for the Petitioner:MR.P.SRIDHAR REDDY, Advocate

Counsel for the Respondent No.: GP FOR LAND ACQUISITION

The Court made the following **ORDER**:

This Writ Petition is filed seeking Writ of Mandamus, to declare the action of the third respondent-Land Acquisition Officer in not passing Award in respect of petitioners' houses admeasuring 40.22 Sq.Mts, 25.99 Sq.Mts, 40.16 sq. Mts, 25.06 Sq.Mts and 30.60 Sq.Mts, situated in Gopa Samudaram Village, Hamlet of Penubarthi, Rapur Mandal, Nellore District, pursuant to the Notification under Section 4(1) of the Land Acquisition Act, 1894, as illegal and arbitrary.

It is the case of the petitioners that though lands of the petitioners were acquired for Telugu Ganga Project, but, in spite of some structures existing on the lands acquired, the third respondent-Land Acquisition Officer has not passed any Award for payment of compensation with regard to the structures.

In the counter affidavit filed on behalf of the respondents, it is stated that the said structures were not existing at the time of notification and the said structures were not noted in the requisition form for the purpose of acquiring the property.

It is submitted by the learned Counsel for the petitioner, Sri P.Sridhar Reddy, that, the said structures were existing and existence of structures was evident from the house tax receipts.

Inasmuch as there is a dispute with regard to existence of structures, the relief sought for cannot be granted in a petition filed under Article 226 of the Constitution of India. However, if the compensation is not awarded for the existing structures, the petitioners can seek reference as contemplated under the provisions of the Land

Acquisition Act, 1894. In view of the factual dispute, no relief can be granted in this Writ Petition. If any application is filed for reference, it is open for the respondents to consider the same and pass appropriate orders.

Subject to the above observation, the Writ Petition is disposed of. No order as to costs.

February 10, 2005.

Msnr.

To

1 Pr. Secretary Irrigation & C.A.D.(P.W.)

Dept., Govt. of A.P. Secretariat Hyderabad

2 The Spl.Collector Telugu Ganga Project
Nellore

3 The Spl. Dy. Collector Telugu Ganga Project
Podalakur Nellore

4. Two CCs to the Govt.Pleader for Land Acquisition, High Court of

AP, Hyderabad (OUT)

5. 2 CD copies